

Ordinance No. 07-022

An ordinance amending the “Health and Sanitation” Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article X, Regulation of Smoking, at Section 10.01, Definitions, by the addition of the definitions of “Fraternal Organization”, “Nursing Home”, “Park” and “Private Club”; by the amendment of Section 10.02, Smoking Prohibited – Public Places; and providing for a fine of up to \$2000 for each offense in violation of the ordinance; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; providing for publication and becoming effective ten days after first publication

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the “**Health and Sanitation**” Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended at **Article X, Regulation of Smoking, Section 10.01, Definitions**, by the addition of the definitions of “Fraternal Organization”, “Nursing Home”, “Park” and “Private Club” so that hereafter said definitions shall be and read as follows:

“Fraternal Organization” shall mean a facility or area for a special purpose organization or for the sharing of sports, arts, literature, politics or other similar interests, but not primarily for profit or to render a service that is customarily carried on as a business, excluding churches, synagogues, or other houses of worship.

“Nursing Home” shall mean a facility or area furnishing food and shelter in single or multiple facilities to five or more persons who are not related by blood, marriage, or adoption to the owner or proprietor of the establishment. In addition, the facility provides minor treatment under the direction and supervision of a physician, or provides a service which meets some need beyond the basic provision of food, shelter and laundry.

“Park” shall mean any land selected, obtained, or acquired by the City for use as a public park, or recreation or playground area, and any building or facility thereon, owned and maintained by the City as a public park, or recreation or playground area, whether or not such areas have been formally dedicated to such purpose.

“Private Club” shall mean the private quarters for a private organization, a principal purpose of which is the preparation and service of food and/or drink for members and their guests only.

Further, Article X, **Section 10.02, Smoking Prohibited – Public Places**, is hereby amended so that said section shall be and read as follows:

Section 10.02 Smoking Prohibited - Public Places

A. **Prohibited Places.** A person commits an offense if he possesses a burning tobacco product or smokes a tobacco product within:

1. A public primary or secondary school;
2. An elevator in buildings generally used by and open to the public, including elevators in office buildings, hotels and multi-family dwellings;
3. A library;
4. A museum;
5. The buildings or grounds of a hospital, health care facility or nursing home;
6. A transit system bus;
7. A room or enclosed place of public assembly in which public business is conducted when the public business requires or provides an opportunity for direct participation or observation by the general public;
8. Indoor or outdoor service lines in which more than one (1) person is giving or receiving goods or services of any kind;
9. Retail or service establishments;
10. Public rest rooms;
11. Every publicly or privately owned theater, auditorium or other enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event or any other performance or event;
12. Any portion of any publicly or privately owned room, building or other enclosed place to which the public or a substantial group of the public has access, which has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area;
13. Any portion of any publicly or privately owned unenclosed area to which the public or a substantial group of the public has access, which has been

designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area;

14. Any seating area of any publicly or privately owned outdoor athletic facility having an overall fixed seating capacity of at least six hundred (600) people and used for the purpose of viewing a single athletic field;
15. Any designated seating area of any publicly or privately owned outdoor theater or amphitheater having an overall fixed or temporary seating capacity of at least five thousand (5,000) people or more and used for the purpose of viewing live performances;
16. Any common area of a multi-family development; or
17. Fifty feet of outside entrances, operable windows, or ventilation systems of enclosed areas where smoking is prohibited by this Article, so as to ensure that tobacco smoke does not enter those areas.
18. the following areas of a park:
 - a. while seated in or within fifty (50) feet of a dugout or bleacher provided for spectators at outdoor athletic events;
 - b. a park playground or within fifty (50) feet of a park playground;
 - c. in plaza areas at athletic complexes or within fifty (50) feet of such area;
 - d. in a park restroom or within fifty (50) feet of such restroom; or
 - e. within the fenced areas at a swimming pool or within fifty (50) feet of such area.

B. Exceptions.

1. It is an exception to Subsection (A) that the smoking or possession was by a person as part of his participation in an authorized theatrical performance.
2. It is an exception to Subsection (A)(16) that the smoking or possession occurred in an unenclosed common area which has been designated by the owner, manager, or operator or other person having control of such areas, as a smoking area.
3. It is an exception to Subsection (A)(16) if the multi-unit development is owner occupied condominiums.
4. It is an exception to Subsection (A)(5) that the smoking or possession occurred on the grounds of a nursing home in an outdoor area, that may be

enclosed by fixed walls, which has been designated by the owner, manager, or operator or other person having control of such area, as a smoking area. Said designated smoking area must be at least fifty feet from outside entrances, operable windows, or ventilation systems of enclosed areas where smoking is prohibited by this Article.

5. It is an exception to Subsection (A) that the smoking or possession occurred in a fraternal organization or private club unless the smoking occurred in an area that has been designated by the owner, manager, operator or other person having control of such area, as a nonsmoking area.

C. Defenses.

1. It is a defense to prosecution under this section that the conveyance or public place within which the offense occurred did not have prominently displayed a reasonably sized notice that smoking was prohibited.
2. It is a defense to prosecution under this section that facilities for the extinguishment of smoking materials were not located within the conveyance or within fifty feet (50') of the public entrances to the place or establishment.
3. It is a defense to prosecution under Sections 10.02(A)(14) and 10.02(A)(15) that the offense occurred in an open concourse designated as a smoking area by the owner, operator or person in control of the outdoor athletic facility, theater or amphitheater.

D. Eating Establishments. An eating establishment within a use governed by this section shall be governed by Section 10.03.

E. Shared HVAC System. Notwithstanding other provisions to the contrary, smoking shall be prohibited in all facilities that have shared HVAC systems, unless smoking is otherwise permitted in all the establishments using a shared HVAC system.

F. Rangers Ballpark in Arlington. Smoking at the Rangers Ballpark in Arlington is allowed only at designated areas near the outer perimeter of the first level and upper concourse. When food kiosks are located in the smoking areas, smoking is prohibited in the kiosk line and within fifty (50) feet of the food kiosk. Signage must indicate that smoking is not permitted in a kiosk line or within fifty (50) feet of the food kiosk. Smoking is not restricted in private club areas of the Rangers Ballpark in Arlington.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars (\$2000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

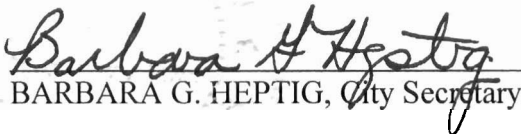
The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 27th day of March, 2007, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 10th day of April, 2007, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.


ROBERT N. CLUCK, Mayor

ATTEST:


BARBARA G. HEPTIG, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY 